

THE INTERSTATE OIL COMPACT COMMISSION E&P WASTE REPORT

As a result of repeated attacks on the E&P Exemption, EPA is reviewing the success of state regulatory programs and discussing a new subtitle D to RCRA for the regulation of E&P Waste. Because most producing states consider it more effective to regulate the sites at the local level, the Interstate Oil Compact Commission conducted an extensive review of E&P Waste management operations. If the states diligently implement the bulk of the IOCC recommendations, EPA likely will follow the states in the development of a regulatory program.

The Interstate Oil Compact Commission (IOCC) is composed of the governors of the oil and gas producing states. It was formed in 1935 to assist states in the development of their regulatory programs. Typically the governors appoint qualified professionals to serve as their designates. However, the governors must authorize all final decisions.

In making its determination not to regulate E&P Waste under RCRA, EPA made two significant findings about state regulatory programs:

Existing state and federal regulatory programs are generally adequate for controlling oil, gas, and geothermal wastes. Regulatory gaps in the Clean Water Act and UIC [Underground Injection Control] programs are already being addressed, and the remaining gaps in state and federal regulatory programs can be effectively addressed by formulating requirements under Subtitle D of RCRA and by working with the States;

It is impractical and inefficient to implement Subtitle C for all or some of these wastes because of the disruption and, in some cases, the duplication of state authorities that administer programs through organizational structures tailored to the oil and gas industry.¹

In response to these findings, the IOCC formed a Council on Regulatory Needs in January 1989, comprised of twelve state regulatory agency members. The Council was supported by a nine member advisory committee, three of whom represented industry, three for state regulatory groups, and three for public interest/environmental groups.² In addition, the Council was assisted by five EPA officials, two Department of Energy representatives, and two industry delegates. The latter group acted as official observers. The aim of the Council was stated as:

¹ Regulatory Determination at 25456.

² Interstate Oil Compact Commission Report on State Regulatory Programs at 2 (September 24, 1990) (IOCC Report).

The purpose of the Council is to recommend effective regulations, guidelines, and/or standards for state level management of oil and gas production wastes. (IOCC 1989) EPA has concurred in this purpose, stating that "...IOCC is leading an effort ...that will use... information gathered by EPA to develop IOCC guidelines for state oil and gas waste management regulations" (Lowrance 1989). The technical and administrative criteria proffered by the Council on Regulatory Needs will be published and disseminated to the states as examples of the range of "elements" necessary for effective state regulatory programs for E&P wastes. The criteria by themselves are not intended to form the sole basis of any future federal statutory or regulatory authorities that may be sought by EPA for oil and gas production wastes.³

This strong statement of purpose is a clear sign that EPA and the states are hopeful that a positive response to the IOCC Report would follow..

4.1 Administrative Criteria

The IOCC Report addressed several criteria required for a successful state regulatory program. The categories of criteria include: (1) permitting and enforcement; (2) operating requirements; (3) personnel and funding; and (4) federal relations. The developing state programs will rank these administrative needs on a state by state basis. Constituents of each state should be aware of these categories as each set of regulations are developed. In some instances, the states may seek to impose changes through permitting requirements.

4.1.1 Permitting and Enforcement

Permitting and enforcement recommendations deal with the nature and enforceability of permits, and the scope of enforcement rights of the agency, including the calculation of civil penalties.

4.1.1.1 Permitting Suggestions

The IOCC Report calls for both individual permits and permits by rule. The state agencies should have the authority to refuse to issue or reissue permits if the applicant has outstanding, finally determined violations or unpaid penalties, or if the past compliance history shows an unwillingness or inability to comply.⁴ The permits should provide that compliance therewith does not relieve compliance with any other laws or regulatory requirements.⁵

4.1.1.2 Compliance Evaluation

The standard rights of inspection and surveillance are recommended. The agency should have the authority to enter any sites where E&P activities are being conducted and to review appropriate activities and records.

4.1.1.3 Enforcement

³ IOCC Report at 2.

⁴ IOCC Report at 11.

⁵ IOCC Report at 12.

The state program should allow the agency to issue notices of violation with compliance schedule, seek injunctive remedy from an appropriate state court, and allow the agency to sue to enjoin any continuing violation. The agency should identify those emergency conditions which pose an imminent and substantial hazardous to human health or the environment which would warrant immediate corrective action after reasonable efforts to notify the operator had failed. The IOCC Report recommends permit revocation, suspension, and administrative orders and penalties as alternative enforcement provisions. Penalty calculations should include factors such as:

- Economic benefit resulting from the violation;
- willfulness;
- harm to the environment and the public;
- harm to wildlife;
- fish or aquatic life or their habitat;
- expenses incurred by the state in removing;
- correcting or terminating the effects of the unauthorized activity; conservation of the resource;
- timeliness of corrective action;
- notification of appropriate authority; and
- history of violations.⁶

The regulated entity should have the right to seek administrative and/or judicial review of any final decision.

4.1.1.4 Public Participation

The permit procedures should afford the affected public adequate notice of the permit proceedings. When there are concurrent federal or other state programs, the notification should be in tandem. Commercial or centralized disposal facility operators should be required to provide written notice to adjacent landowners of record.⁷

4.1.2 Operating Requirements

Operating requirements include contingency planning, financial assurance, waste tracking, and other day to day functions. The operators should be required to prepare and maintain a contingency plan for waste release prevention and control. Notification, remedial action, training and responsible individuals should be included within the plan. The IOCC makes reference to spill prevention control and countermeasure plans (SPCC), very common in the oil and gas industry.⁸ Financial assurance for inactive wells, drilling, plugging and abandonment, and waste disposal facilities are also recommended. Financial assurance vehicles include surety bonds, self-bonding, letters of credit, certificates of deposit, cash, as well as federal, state, or municipal bonds. The states are encouraged to accept financial assurance options which facilitate an operator's compliance with bonding requirements, such as blanket bonds.

⁶ IOCC Report at 13.

⁷ IOCC Report at 13-14.

⁸ IOCC Report at 13.

Periodic review of the amount of assurance is suggested.⁹

4.1.2.1 Contingency Planning

The IOCC Report contemplates that the states will have the right to approve contingency plans. The plan should describe prevention and spill response measures, similar to an SPCC plan.¹⁰

4.1.2.2 Financial Assurance

Financial assurance is provided for closure and remediation of sites in the event the operator fails to perform. The IOCC Report indicates that installations subject to the requirements (i.e., wells, disposal facilities, inactive wells) may vary from state to state. Standard form environmental assurances are recommended, in addition to the blanket bond concept. The amount of financial assurance should be reviewed periodically.”¹¹

4.1.2.3 Waste Hauler Certification

Driver training, with an emphasis on recordkeeping, delivery, emergency response and notification procedures, are recommended. Registration of commercial transport vehicles and haulers is suggested.¹²

4.1.2.4 Waste Tracking

Strong waste tracking procedures are recommended. The waste generator, hauler, and operator of the disposal facility should retain records for a minimum of three years from date of shipment.”¹³

4.1.2.5 Location of Closed Disposal Sites

The agency should be able to require the identification of closed disposal sites.¹⁴

4.1.3 Personnel and Funding

Enhanced administrative personnel and legal support are recommended to assure viable enforcement activity.¹⁵

4.1.4 State and Federal Relations

Each state is encouraged to foster a closer working relationship between the various applicable state agencies. EPA is encouraged to recognize that due to the varying geologic, hydrologic and historic conditions in different states and areas within a state, the diverse characteristics of oil and gas activities, and differences in state government structures among the producing states, the regulatory approach from state to state will also vary. However, the IOCC Report and criteria are intended to serve as a baseline of performance by which the effectiveness of the state programs can be judged.¹⁶

4.2 Technical Criteria

⁹ IOCC Report at 14-15.

¹⁰ IOCC Report at 13.

¹¹ IOCC Report at 14.

¹² IOCC Report at 15.

¹³ IOCC Report at 15.

¹⁴ IOCC Report at 15.

¹⁵ IOCC Report at 16.

¹⁶ IOCC Report at 19.

The technical criteria are the core of the IOCC Report. The oil and gas environmental coordinator and lawyer will find these criteria driving new enforcement and permit proceedings. A prudent waste management operator will be able to study these criteria and predict with success where the oil and gas waste management regulatory program is headed.

4.2.1 Umbrella Management Policies

The IOCC Report has created an umbrella of management policies applicable to all waste activities.¹⁷ Among these criteria are a prohibition against E&P Waste and hazardous waste being placed in the same facilities. Flexible technical and design criteria for siting, construction and operation of E&P Waste disposal facilities are also included. The IOCC Report addressed an issue of concern for most states -- use of municipal landfills, by stating:

Disposal of drilling muds and drilling fluids into municipal waste landfills should not be considered when better disposal options are available. However, drilling muds and drilling fluids with no free liquids that are not mixed with any other wastes may be disposed of in municipal waste landfills only when such landfills are designed to contain such wastes. Low volume E&P Wastes, such as oil rags and drained filters, and any other E&P Wastes that are similar in composition to routine municipal solid waste streams may be disposed of in municipal solid waste landfills.¹⁸

Thus, the regulatory agencies will be forcing the oil and gas industry to restrict its use of municipal landfills. In Texas, the Railroad Commission and the Department of Health (DOH) have already addressed the issue in a memorandum guidance issued by the Railroad Commission prohibiting disposal of E&P Waste at landfills without a minor permit¹⁹ unless the waste is considered inert.²⁰ The guidance chart provided by the Railroad Commission is a valuable tool for anyone in the business. The DOH issued a guidance on petroleum contaminated soils.

The IOCC Report encourages the use of recycling, source reduction and - treatment.²¹ Again, the Railroad Commission municipal landfill memorandum encourages the use of these techniques.

¹⁷ IOCC Report at 21.

¹⁸ IOCC Report at 21.

¹⁹ A minor permit is "to store only a minor amount of oil field fluids or to store or dispose of only a minor amount of oil and gas waste." RRC Rule 8(d)(6)(G). In practice, many regulated entities also use the minor's permit to secure the Railroad Commission's consideration of the exempt nature of the waste. In such event, the regulated entity typically is required to submit a waste analysis.

²⁰ "Inert wastes" are "essentially insoluble oil and gas wastes including, but not limited to, concrete, glass, wood, and wire." Railroad Commission Rule 8(d)(3)(B).

²¹ IOCC Report at 21.